

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Nandor J. Vadas, Magistrate Judge

IVAN VERNORD CLEVELAND, et)	
al.,)	
)	
Plaintiffs,)	
)	
VS.)	NO. C 07-02809 NJV
)	
BEN CURRY, WARDEN, et al.,)	
)	
Defendants.)	
)	

San Francisco, California
Friday, November 8, 2013

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiffs:

LAW OFFICE OF DENNIS CUNNINGHAM
115 A Bartlett Street
San Francisco, California 94110
BY: DENNIS CUNNINGHAM, ATTORNEY AT LAW

THE LAW OFFICES OF JEFF WOZNIAK
179 11th Street - 2nd Floor
San Francisco, California 94103
BY: JEFF WOZNIAK, ATTORNEY AT LAW

(APPEARANCES CONTINUED ON FOLLOWING PAGE)

REPORTED BY: Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR
Official Reporter

APPEARANCES: (CONTINUED)

For Defendants:

OFFICE OF THE ATTORNEY GENERAL
State of California
455 Golden Gate Avenue - Room 11000
San Francisco, California 94102

BY: MICHAEL J. QUINN, DEPUTY ATTORNEY GENERAL
KYLE A. LEWIS, DEPUTY ATTORNEY GENERAL

I N D E X

Friday, November 8, 2013

Verdict

PAGE VOL.

685 5

Friday - November 8, 2013

11:36 a.m.

P R O C E E D I N G S

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(Proceedings were heard out of the presence of the jury:)

THE CLERK: Okay. We're on the record in Civil
07-2809, Ivan Vernord Cleveland versus Ben Curry.

MR. CUNNINGHAM: Good morning, Your Honor. Dennis
Cunningham for the plaintiffs.

THE COURT: Mr. Cunningham.

MR. QUINN: Michael Quinn for defendants.

THE COURT: Mr. Quinn.

I have a note from the jurors dated 11/8/13 at 11:00 a.m.:
(reading)

"The jury has reached a unanimous verdict."

If you would call the jurors in, please.

(Proceedings were heard in the presence of the jury:)

THE COURT: Good morning, Mr. Gray. I understand the
jury has reached a unanimous verdict; is that correct?

JUROR NO. 2: Yes, we have.

THE COURT: Could you hand the verdict to the bailiff,
please.

(Pause in proceedings.)

THE COURT: Would you please read the verdict into the
record?

///

VERDICT**VERDICT**

THE CLERK: Okay. Ladies and gentlemen of the jury, listen to your verdict as it shall stand recorded.

In the matter of Ivan Vernord Cleveland, et al., versus Ben Curry, Civil 07-2809.

Number 1, Violation: A violation of 42 U.S.C. Section 1983, Eighth Amendment, Sexual Assault Against Defendant Abanico.

Question Number 1: Do you find by a preponderance of the evidence that any of the plaintiffs' Eighth Amendment rights were violated by Defendant Abanico.

Yes.

Question Number 2: Identify each plaintiff whose constitutional rights were violated by Defendant Abanico.

Ivan Cleveland, Demetrius Huff, Desmond Jones, Robert Morris, and Kenneth Trask.

Question Number 3: What amount of money, if any, do you find will reasonably compensate each plaintiff you identified in response to Question Number 2 for the injury he has proved by a preponderance of the evidence was caused by Abanico? For each plaintiff identify the amount of compensatory damages.

Ivan Cleveland, \$2,000; Demetrius Huff: \$5,000; Desmond Jones: \$2,000; Robert Morris, \$2,000; Kenneth Trask, \$10,000.

If you entered any amount here, proceed to Question Number 5. If you entered no amount here, proceed to the next

VERDICT

1 question.

2 Question Number 5: Were Abanico's actions malicious,
3 oppressive, or in reckless disregard of plaintiffs' rights such
4 that you find punitive damages appropriate?

5 Yes.

6 Proceed to the next question.

7 Question Number 6: For each plaintiff identify whether
8 you find punitive damages against Abanico are appropriate.

9 Ivan Cleveland, Demetrius Huff, Desmond Jones, Robert
10 Morris, Kenneth Trask.

11 Question Number 7: What amount of punitive damages
12 against Abanico, if any, do you find appropriate for each
13 plaintiff you identified in response to Question Number 6? For
14 each plaintiff identify the amount of punitive damages.

15 Ivan Cleveland, \$5,000; Demetrius Huff, \$5,000, Desmond
16 Jones, \$5,000; Robert Morris, \$5,000; Kenneth Trask, \$5,000.

17 Section 2, a violation of 42 U.S.C. Section 1983,
18 Eighth Amendment Sexual Assault, Failure to Intervene Against
19 Defendant Curry:

20 Question Number 8: Do you find by a preponderance of the
21 evidence that Defendant Curry failed to intervene to stop the
22 violation of plaintiffs' Eighth Amendment rights?

23 Yes.

24 Question Number 9: Identify each plaintiff whose
25 constitutional rights were violated because Defendant Curry

VERDICT

1 failed to intervene.

2 Ivan Cleveland, Demetrius Huff, Desmond Jones, Robert
3 Morris, Kenneth Trask.

4 Question Number 10: What amount of money, if any, do you
5 find will reasonably compensate each plaintiff you identified
6 in response to Question Number 9 for the injury he has proved
7 by a preponderance of the evidence was caused by Curry? For
8 each plaintiff identify the amount of compensatory damages.

9 Ivan Cleveland, none; Demetrius Huff, none; Desmond Jones,
10 none; Robert Morris, none; Kenneth Trask, none.

11 If you entered any amount, proceed to Question Number 12.
12 If you entered no amount here, proceed to the next question.

13 If you entered no amount in --

14 Question Number 11: If you entered no amount in Question
15 Number 10 for each plaintiff you identified in response to
16 Question Number 9, you must award nominal damages between
17 1 cent and 1 dollar. Identify the amount of nominal damages by
18 individual plaintiff.

19 Ivan Cleveland, 1 dollar; Demetrius Huff, 1 dollar;
20 Desmond Jones, 1 dollar; Robert Morris, 1 dollar; Kenneth
21 Trask, 1 dollar.

22 Question Number 12: Was Curry's failure to intervene
23 malicious, oppressive, or in reckless disregard of plaintiffs'
24 rights such that you find punitive damages appropriate?

25 Yes.

VERDICT

1 Question Number 13: For each plaintiff identify whether
2 you find punitive damages against Curry are appropriate.

3 Ivan Cleveland, Demetrius Huff, Desmond Jones, Robert
4 Morris, Kenneth Trask.

5 Question Number 14: What amount of punitive damages
6 against Curry, if any, do you find appropriate for each
7 plaintiff you identified in response to Question Number 13?
8 For each plaintiff identify the amount of punitive damages.

9 Ivan Cleveland, \$20,000; Demetrius Huff; \$20,000, Desmond
10 Jones, \$20,000; Robert Morris, \$20,000; Kenneth Trask, \$20,000.

11 The above verdict is our unanimous verdict in this case
12 dated November 8th, 2013, Michael A. Gray, Foreperson.

13 Is the verdict read your verdict?

14 **ALL:** Yes.

15 **THE CLERK:** Is the verdict unanimous?

16 **ALL:** Yes.

17 **THE CLERK:** The verdict is unanimous, Your Honor.

18 **THE COURT:** Thank you.

19 Juror Number 1, is that your verdict?

20 **JUROR NO. 1:** Yes.

21 **THE COURT:** Juror Number 2, is that your verdict?

22 **JUROR NO. 2:** Yes.

23 **THE COURT:** Juror Number 3, is that your verdict?

24 **JUROR NO. 3:** Yes.

25 **THE COURT:** Juror Number 4, is that your verdict?

VERDICT

1 JUROR NO. 4: Yes.

2 THE COURT: Juror Number 5, is that your verdict?

3 JUROR NO. 5: Yes.

4 THE COURT: Juror Number 6, is that your verdict.

5 JUROR NO. 6: Yes.

6 THE COURT: Juror Number 7, is that your verdict?

7 JUROR NO. 7: Yes.

8 THE COURT: And Juror Number 8, is that your verdict?

9 JUROR NO. 8: Yes.

10 THE COURT: Ladies and gentlemen, that concludes your
11 participation in this case.

12 I would like to thank you, the parties would like to thank
13 you, and my staff would like to thank you for taking the time
14 out of your busy schedules to perform your duties as jurors.

15 As I indicated to you when we started this case, without
16 people like you who are willing to come to court and sit and
17 listen to these cases, our form of justice would not work.

18 Now, then, you are free to go. You may speak to the
19 parties if you wish; or if you do not wish to, you do not need
20 to speak to the parties. It is totally up to you individually.

21 If anyone contacts you and you feel that it's being
22 oppressive or somehow that you don't want to speak to them,
23 please inform the Court immediately and I will remedy the
24 matter. I doubt very much that that would take place, but just
25 on the off chance that it would.

PROCEEDINGS

1 Do they need to go back to the Jury Commissioner?

2 **THE CLERK:** No. They can -- if they have validated
3 their parking and everything, they've got everything they need
4 from there, they don't need to go upstairs.

5 **THE COURT:** Then you're free to go, and thank you so
6 very much for your time. I'm also available if you'd like to
7 speak to me individually or collectively.

8 Thank you.

9 (Jury excused.)

10 (Proceedings were heard out of the presence of the jury:)

11 **THE COURT:** All right, gentlemen, we'll need to set
12 posttrial motions. Probably it will take a little bit longer.
13 My suggestion is, given the holidays, do you think it would be
14 appropriate to do it the first part of January 2014 or would
15 you like those posttrial motions earlier?

16 **MR. CUNNINGHAM:** I'll leave it up to counsel.

17 **MR. QUINN:** You can set it out, that's fine.

18 **THE COURT:** All right. Lisa, is there a possibility
19 you can pull up my calendar?

20 **THE CLERK:** I can.

21 (Pause in proceedings.)

22 **THE CLERK:** What month do you want me to look for?

23 **THE COURT:** January, please.

24 **THE CLERK:** Okay.

25 (Pause in proceedings while Court and Clerk confer.)

PROCEEDINGS

1 **THE COURT:** The 28th?

2 All right, then, counsel right now we'll schedule
3 posttrial motions for Tuesday, January 28th, 2014, and I'm
4 going to schedule them here at 10:00 a.m. I don't think we can
5 do these by the phone. All right?

6 **MR. QUINN:** That's fine.

7 **MR. CUNNINGHAM:** All right.

8 **THE COURT:** And I'll ask that the parties follow the
9 Local Rules for scheduling for filing motions.

10 **MR. CUNNINGHAM:** All right. Judge, would that include
11 a fee application as well would be postponed until that time?

12 **THE COURT:** No. Go ahead and file your fee
13 application pursuant to the PLRA.

14 **MR. CUNNINGHAM:** Okay.

15 **THE COURT:** All right. And, also, I assume that
16 counsel will file a motion for a new trial at that time.

17 **MR. QUINN:** We'll talk about it.

18 **THE COURT:** All right. And perhaps the parties can
19 discuss the case between now and then.

20 **MR. CUNNINGHAM:** I think that's enough time to do it.

21 **THE COURT:** Gentlemen, excuse me --

22 **MR. CUNNINGHAM:** Can --

23 **THE COURT:** I'd like to thank all five of you for
24 acting in a professional manner here this last week. The Court
25 appreciates it. It demonstrates that regardless of your

PROCEEDINGS

1 situation, that when there's a serious matter, you can proceed
2 appropriately; and the Court thanks you, the staff thanks you
3 also.

4 **ALL:** Thank you, sir.

5 **THE COURT:** Anything further?

6 **MR. CUNNINGHAM:** Can we have a few minutes here with
7 them?

8 **THE COURT:** Can you give them a couple minutes?

9 **THE CORRECTIONAL OFFICER:** If you want us to, sir,
10 yes.

11 **THE COURT:** Mr. Quinn, anything further?

12 **MR. QUINN:** Nothing further.

13 **THE COURT:** All right. Thank you, gentlemen. Very
14 good trial. I appreciate the efforts that everybody put into
15 it.

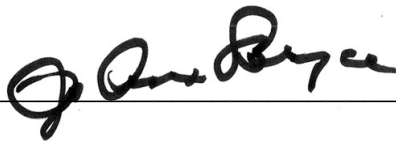
16 (Proceedings adjourned at 11:51 a.m.)

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18 **CERTIFICATE OF REPORTER**

19 I certify that the foregoing is a correct transcript
20 from the record of proceedings in the above-entitled matter.

21 DATE: Friday, November 8, 2013

22
23 

24 Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR
25 U.S. Court Reporter